

**Mohd Aliman bin Mohd Amin & Ors v
Sabah Surveyor Board & Ors**

HIGH COURT (SANDAKAN) — SUIT NO S 22-36 OF 1999
LINTON ALBERT JC
7 SEPTEMBER 2004

Civil Procedure — Parties — Locus standi — Claim for refund of survey fees — Whether actually pursued by plaintiffs — Whether party seeking redress lacked locus standi to pursue claim

The plaintiffs applied to the State Government ('the first application') for the alienation of 420 hectares of land and subsequently nominated Sanwealth Sdn Bhd ('Sanwealth') as their attorney and were given the requisite powers connected with the prospect of logging on the said land. Sanwealth paid the required survey fees to the first defendant in respect of the first land application, which was duly conducted. However, prior to the appointment of Sanwealth, the plaintiffs had withdrawn the first application in favour of one Ladang Tebu Batu Puteh Sdn Bhd which was formed by them to pursue the application ('the second application') for the said land. This effectively ended Sanwealth's hope of logging and purchasing timber from the said land. This was the plaintiffs' action seeking the refund of the balance of survey fees and damages for loss of the right to harvest timber in the said land.

The main issue before this court was whether the parties had locus standi to seek the required redress.

Held, dismissing the plaintiffs' action:

- (1) Parties are bound by their pleadings and evidence proved that it was Sanwealth which sought the refund. However, its claim could not be upheld as it was not a party to this action and therefore it lacked locus standi (see para 4).
- (2) Reliance by the plaintiffs and Sanwealth on the concept of legitimate expectation of the right to harvest timber in the said land is misconceived. In any event, such a right was spurious and too remote to clothe them with the locus standi to pursue the remedy bearing in mind that the 2nd defendant had no power under the Forest Enactment to consider, let alone grant, a licence to the plaintiffs or Sanwealth to log on the said land (see para 6).

[Bahasa Malaysia summary]

Plaintif-plaintif telah memohon ke Kerajaan Negeri ('permohonan pertama') untuk pemberimilikan 420 hektar tanah ('tanah tersebut') dan seterusnya telah mencalonkan Sanwealth Sdn Bhd ('Sanwealth') sebagai wakil mereka dan diberi kuasa berkenaan dengan prospek pembalakan di tanah tersebut. Sanwealth telah membayar yuran ukur mengukur kepada defendan pertama berkenaan dengan permohonan pertama yang telah

- A** disempurnakan. Akan tetapi, sebelum pencalonan Sanwealth dibuat, plaintif-plaintif telah menarik balik permohonan pertama berpihak kepada Ladang Tebu Batu Puteh Sdn Bhd yang telah dibentuk oleh mereka untuk meneruskan permohonan ('permohonan kedua') untuk tanah tersebut. Ini membawa kesan yang mengakhiri peluang Sanwealth untuk mengusahakan kerja pembalakan dan membeli balak dari tanah tersebut. Ini adalah
- B** tindakan plaintif-plaintif memohon pemulangan baki yuran ukur mengukur yang dibayar dan ganti rugi kehilangan hak untuk mengeluarkan kayu balak daripada tanah tersebut.

Isu utama di hadapan mahkamah ini adalah sama ada pihak-pihak mempunyai locus standi untuk mendapatkan tebus rugi yang dipohon.

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- Diputuskan**, menolak tindakan plaintif-plaintif:

- (1) Pihak-pihak adalah terikat dengan pliding mereka dan bukti menunjukkan bahawa sebenarnya Sanwealth yang memohon pembayaran balik tersebut. Akan tetapi, tuntutan mereka tidak boleh dibenarkan kerana ia bukan suatu pihak dalam tindakan ini dan dengan itu kekurangan locus standi (lihat perenggan 4).
- D**
- (2) Adalah silap untuk plaintif-plaintif dan Sanwealth bergantung kepada konsep harapan sah atas hak untuk mengambil kayu balak di tanah tersebut. Walau bagaimanapun, hak sebegini tidak wujud dan di luar dugaan untuk memberikan mereka locus standi untuk meneruskan remedi berkenaan dengan mengambil kira bahawa defendan kedua tidak mempunyai kuasa di bawah Enakmen Hutan untuk mempertimbangkan, sekalipun membenarkan, lesen kepada plaintif-plaintif dan Sanwealth untuk membalak di tanah tersebut (lihat perenggan 6).]
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- Notes**

For cases on locus standi, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4276–4285

- G**
- Cases referred to**

Abdul Razak Ahmad v Kerajaan Negeri Johon & Anor [1994] 2 MLJ 297 (refd)

Anjalai Ammal & Anor v Abdul Kareem [1969] 1 MLJ 22 (refd)

District Council Central, Province Wellesley v Yegappan [1960] 2 MLJ 177 (refd)

- H**
- Orang-Orang Yang Menduduki Rumah di Bawah Hakmilik Geran No 26977 Lot 4271 Johor Bahru v Puncak Klasik Sdn Bhd & other appeals* [1997] 3 MLJ 761 (refd)
- NVJ Menon v The Great Eastern Life Assurance Company Ltd* [2004] 4 AMR 164 (refd)

- I**
- Legislation referred to**

Forest Enactment

Edwin Tsen (Tan Pang Tsen & Co) for the plaintiffs

Halim Hanapia (State Legal Officer, State Attorney General's Chambers) for the defendants

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Linton Albert JC:

[1] The plaintiffs comprise a group of land applicants (the applicants) who had in 1985 collectively applied to the State Government for the alienation of 420 hectares of land situated at Sungai Gologob, Kinabatangan ('the said land') under P.T. Numbers 94090281 and 85090609 to 85090677 (the first land application). By a deed dated 17 June 1985, the rest of the applicants appointed the first plaintiff as their attorney in respect of the first land application. The first plaintiff was also one of the applicants, and by a deed entitled 'substitution under a Power of Attorney' dated 5 August 1994 ('the said deed'), one Sanwealth Sdn Bhd ('Sanwealth') became the attorney for the applicants. Sanwealth's interest was confined to the prospect of extracting timber from the said land. Hence, Sanwealth was given the requisite powers connected with or relating to the prospect of logging on the said land. Prior to Sanwealth's involvement, the applicants had in 1993 entered into agreements with one FM Vun Contractor to extract and purchase timber in the said land and FM Vun Contractor was subsequently replaced by Sanwealth.

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[2] The first land application was approved on 30 September 1985 and on 10 October 1985 the second defendant issued the Registered Survey Paper ('the RSP') for the purpose of carrying out a survey in respect of the said land. By a letter dated 28 September 1991, the applicants withdrew the first land application in favour of one Ladang Tebu Batu Puteh Sdn Bhd ('Ladang Tebu') which was formed by the applicants themselves to pursue the application for the said land.

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[3] Soon after execution of the said deed, Sanwealth proceeded with the application for the survey of the said land and after paying the requisite survey fee to the first defendant on or about 19 August 1994 in respect of the first land application, RSP Number 94099042 was issued on 5 September 1994 by the Sandakan District Surveyor (the Surveyor) an officer at the second defendant's department at Sandakan, to one Juruukur Masa Sdn Bhd to conduct the survey, which they did. On 4 November 1996, Juruukur Masa Sdn Bhd was again issued another RSP number 96099099 to conduct a similar survey over the said land in respect of the application by Ladang Tebu under PT 91090900. By a letter dated 4 March 1997, the Surveyor wrote to the second defendant, the applicants and Ladang Tebu confirming that on the instructions of the second defendant, the RSP number 94099042 for the first land application had been deleted from the records of the second defendant's department and that RSP Number 96099099 in respect of Ladang Tebu's application under PT 91090900 had been forwarded to the second defendant for further action. The letter dated 4 March 1997 effectively put an end to whatever hope Sanwealth had of logging and purchasing timber from the said land. Hence, the plaintiffs commenced this action seeking the refund of the sum

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- A** of RM98,982.50, representing the balance of survey fees unrefunded and damages for loss of the right to harvest timber in the said land. The plaintiffs' action is against the second and third defendants as the claim against the first defendant has been abandoned.
- B** [4] Learned counsel for the defendants, Mr Halim Hanapia, State Legal Officer, contended that this action was in fact pursued by Sanwealth which was not a party to this action and therefore it lacked locus standi. I find merit in this contention because it is painfully apparent from prayers 1(b) and 2 of the Statement of Claim that the relief for the refund of the survey fees was sought by Sanwealth. It is not open to the learned counsel for the plaintiffs, Mr Edwin Tsen to stray from the pleaded case and submit that
- C** the plaintiffs are entitled to the refund of the survey fees by virtue of rule 2(6) (section 46) (GN 505 of 1930). It is elementary that a party is bound by his pleadings (see *Anjalai Ammal & Anor v Abdul Kareem* [1969] 1 MLJ 22). Hence, I do not find it necessary to consider the merits of Counsel's submission that the plaintiffs are entitled to the refund of the
- D** survey fees as this was not pleaded by the plaintiffs. It is indisputable that the survey fees were paid by Sanwealth but the question is whether, in the circumstances, it is entitled to the relief sought. In *Orang-Orang Yang Menduduki Rumah di Bawah Hakmilik Geran No 26977 Lot 4271 Johor Bahru v Puncak Klasik Sdn Bhd & other appeals* [1997] 3 MLJ 761, the Court of Appeal allowed the preliminary objection of counsel for the
- E** respondent (the plaintiff) that the appellants (the defendants) had no locus standi to pursue their appeal as they were unnamed persons in the action at the High Court. It follows, therefore, that Sanwealth which is not even a party to this action lacks the locus standi to seek the relief for the refund of the survey fees.
- F** [5] Finally, I shall consider whether the plaintiffs have established their case for damages against the second and third defendants. I do not see how the plaintiffs can succeed when they had, by the first plaintiff's letter dated 28 September 1991, surrendered the approval of their first land application to Ladang Tebu. It stands to reason, therefore, that the doctrines of misrepresentation and estoppel have no relevance whatsoever. Having
- G** decided that Sanwealth has no locus standi it is immaterial whether the company had been 'deliberately misled and influenced' by the approval of the first land application, a proposition that was dealt with at length by learned counsel for the plaintiffs, but which is of no consequence as it does not persuade me to arrive at a different conclusion. It is also of no assistance to the plaintiffs that PW 2 testified to the effect that the plaintiffs did not
- H** surrender the first land application in favour of Ladang Tebu, to contradict the letter written by the first plaintiff on 28 September 1991. The court cannot rely on the oral testimony of PW 2 given some 13 years after the first plaintiff's letter (see *NVJ Menon v The Great Eastern Life Assurance Company Ltd* [2004] 4 AMR 164)
- I** [6] Similarly, reliance by the plaintiffs and Sanwealth on the concept of legitimate expectation of the right to harvest timber on the said land is misconceived. In any event, the alleged right to harvest timber in the said

land is spurious and too remote to clothe the plaintiffs and Sanwealth with the locus standi to pursue the remedy bearing in mind that the second defendant had no power under the Forest Enactment to consider, let alone grant, a licence to the plaintiffs or Sanwealth to log in the said land (see *Abdul Razak Ahmad v Kerajaan Negeri Johon & Anor* [1994] 2 MLJ 297 and *District Council Central, Province Wellesley v Yegappan* [1960] 2 MLJ 177).

[7] It must be emphasised that the court is not without sympathy to the likes of Sanwealth who fall victim to rogue land applicants who are not averse to entering into a multiplicity of transactions to obtain quick, sinecure profits and then disappear leaving those victims like Sanwealth here, in the lurch, and I must add that actions such as this have become commonplace before this court and it is not unusual to have situations compounded by bureaucrats who ignore decisions made by their predecessors. Be that as it may, for the reasons and in the light of the legal principles set out above, the plaintiff's action is dismissed with costs to be taxed unless agreed.

[8] Order accordingly.

Plaintiffs' action dismissed with costs.

Reported by AG Kalidas

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